ATTACHMENT B

REMARKS

This preliminary amendment is being submitted in conjunction with the telephonic interview between Applicants' representatives and the Examiner so as to put this case in condition for allowance. In particular, as described in detail below, Applicants have now amended Claim 1 in such a manner so as to quantify the advantage of the present invention, namely the ability of the claimed supports to provide an assay wherein at least about 100 to 130 of the supports will be readable through the base of the well. As set forth further below, it is clear that none of the cited references disclose or suggest this feature. In addition, new claim 22 is provided which relates to the feature wherein the identity of the spatially varying pattern is recognizable even when a fluorescent label is used in the biochemical assay which is yet a further inherent feature of the invention not disclosed or suggested in the prior art. The feature is also discussed at page 4, lines 14-26 of the application and thus no new matter is added. As was previously indicated in the Interview with the Examiner, the microlabel in Aurenius has a colored barcode and could not be used in this fashion. As indicated in the discussions with the Examiner, and as set forth in more detail below, the invention as now reflected in Claim 1 and its dependent claims provides advantages that the cited prior art does not disclose or suggest, and the amended claims now reflect in more precise terms the scope of the advantages obtained over the prior art.

In the outstanding final Office Action, Claims 1-2 and 4-10 stood rejected under 35 U.S.C. § 103(a) as being unpatentable over EP 0395300 (hereinafter "EP '300"), Rigby et al. or Aurenius. In Applicants' prior submissions, Declarations were provided

which evidenced the advantageous and unobvious beneficial results obtained by the present invention which were not taught or suggested in the prior references which could not achieve the results of the present invention. However, the Examiner maintained that the advantage had to be quantified in terms other than just the dimensions in order to be patentable over the cited references.

Accordingly, without addressing the issue of whether the prior position was justified, Applicants have overcome this rejection by virtue of the present claims whereby the advantage afforded by the invention is quantified in terms of the great number of the supports that will be readable using the assays of the present invention. As indicated in the attached Declaration from Dr. Peter Swarbrick, Ph.D., the present claims reflect a statistical analysis based on the assay disclosed in the original application, and thus no new matter has been added to the claims as the quantification of number of readable supports is an inherent property of the assay described in the specification. As also set forth in the attached Declaration, this number of supports that are readable is roughly an order of magnitude greater than what would be possible using the cited Aurenius patent, US 5,129,974, and thus it is clear that the claimed support is not disclosed or remotely suggested by Aurenius. Accordingly, the Examiner's rejection on the basis of Aurenius is respectfully traversed and should be withdrawn.

Moreover, the other two cited references, namely Rigby and EP '300, are even further afield from the present claims, and clearly fail to teach or suggest the present invention, In particular, as Applicants have previously shown, the EP '300 device and Rigby membrane are macroscopic objects which have dimensions larger than 100 μm

thereby rendering them unfit for use if scaled down to have a dimension less than 100 μm. In other words, if the devices of EP '300 or Rigby were to have the claimed dimensions, the devices would fail to be suitable for use as disclosed in the respective disclosures, as further evidenced by the prior Declarations submitted in this application. Accordingly, neither Rigby of EP '300 teach or suggest the claimed support having all external dimensions having less than 100 μm whereby at least about 100 to 130 of the supports will be readable through the base of the well, and thus the Examiner's rejection on the basis of those references is respectfully traversed and should also be withdrawn.

Based on the foregoing, Applicants respectfully submit that the prior art clearly does not teach or suggest the claims as presently amended, and that the prior art rejections should be withdrawn.

Finally, as previously indicated, Applicants respectfully request that previously withdrawn claims 11-16 should be rejoined in the present application and allowed along with the claims for the support are discussed above in accordance with MPEP § 821.04. Claims 11-16 depend directly or indirectly from claim 1 which, based on the foregoing discussion, should be found allowable over the prior art. Therefore, method claims 11-16, which recite a method for fabricating the supports of claim 1, should be rejoined in the present application as previously withdrawn claims 11-16 require all limitations of the allowable claim 1.

In view of the foregoing, Applicants respectfully submit that the present Amendment overcomes all prior rejections and places this case in condition for allowance. Allowance of Claims 1-2, 4-6, 8-16 and 22 is thus respectfully requested.

END OF REMARKS